Multnomah County
Local Public Safety Coordinating Council

LPSCC
Mental Health and Public Safety Subcommittee Meeting

Summary Notes for February 23, 2016

Attendance
Judge Julie Frantz, Co-Chair, OJD
Nancy Griffith, Co-Chair, Director Corrections Health

Judge Cheryl Albrecht, OJD
Dawn Andrews, MPD
Jay Auslander, Cascadia
Katie Burgard, MCSO
Eric Collins, MCDA
Deena Corso, Department of Community Justice
Jean Dentinger, MHASD
Nimisha Gokaldas, MHASD
Judy Hadley, Citizen
David Hildago, MHASD
Jeff Howes, MCDA
Liv Jenssen, DCJ
Judge Edward Jones, OJD
Micky Logan, OSH
Stephanie Maya Lopez, OSH
Bob McCormick, PPB
Adam Renon, Office of Commissioner Shiprack
Eric Sevos, Cascadia
Chuck Sparks, Multnomah County District Attorney
Lindsay Stover, DCHS-MHASD

LPSCC Staff
Christina Youssi, LPSCC Staff

***The Oregon State Hospital and Defendants who are Unable to Aid & Assist* Presentation**

Micky Logan, OSH Legal Affairs Director, and Dr. Stephanie Lopez, OHS Director of Forensic Evaluation Services, presented information about the Oregon State Hospital and defendants who are unable to Aid and Assist.

Dr. Stephanie Lopez talked about addressing malingering (intentional production of false or grossly exaggerated symptoms motivated by external incentive).

Key Points:
- Hospitalization is not always the best option because they may go one step forward but several steps back (starting over with health benefits, meds, employment, pets, etc). A lot of turnover and stress.
- Not everyone with mental illness is incompetent to stand trial.
- The law keeps changing

For information about the presenters, legal changes, civil commitments, HB 2420, statutory doorways into OSH, different types of commitment, patient types and median days at OSH, the new state hospital, malingering, OSH cost of care, census data and percent change, pathways to criminal commitment, andt he Forensic Evaluation Service (FES), see the below presentation.

- Judge Jones requested daily snapshot numbers for Multnomah County and all counties.

There was discussion around evaluations. If evaluators had to drive around the state, it would reduce number of evaluations completed. Judge Frantz encourages local evaluation, and is interested in having a panel of local evaluators. Judge Lafeman (?) knows more could be a resource. A 365 is not required. HB 2420 should be able to help judge know about history of malingering. For those with less severe mental illness, the county wants to increase the ability for community restoration rather than hospital.

The presenters will send a link for checklist of what needs to be included in a report. The evaluator's opinion can be found in the back or the front of the evaluation.
The Mink order was explained: federal court order within 7 days of court signing 370, the state hospital has to get defendant from jail to hospital. One consequence is it backs up civil commitments.

Judge Frantz would like to move forward with evaluation team. The biggest barrier is the money to pay. Need to figure out if paying for evaluation is an issue. Milwaukie and San Francisco have evaluators with access to the jail.

The meeting was adjourned.

The Oregon State Hospital and Defendants who are Unable to Aid and Assist

Today's Presenters

Micky Logan, JD

OSH Legal Affairs Director

micky.f.logan@state.or.us

503-947-2937

Stephanie Maya Lopez, MD

OSH Director of Forensic Evaluation Service

stephanie.lopez@state.or.us

541-680-4810

Major Take-Away Concepts

- Not everyone w/mental illness is “incompetent to stand trial”
- Not everyone w/mental illness needs to go to OSH
- Hospitalization has serious drawbacks
- The law keeps changing; don’t assume that you already know the statutes

Legal Changes Effective 1/1/2012

- Aid and assist restorative services should be provided in community unless not available* or person too dangerous (ORS 161.370)
- Mandatory community evaluation for possible conditional release for Class C Felony "GEI" defendants (ORS 161.327(3)(b))
- Certification of forensic evaluators and specific requirements re: content of reports/evaluations

ORS 426.701: Civil Commitment of Extremely Dangerous Persons

- SB 421 (2013)
- Defines “extremely dangerous” related to criminal acts that have not been adjudicated
- People committed/conditionally released under this new type of commitment are placed under the jurisdiction of the PSRB
- After 2 years, the PSRB can certify to the court that the person is still “extremely dangerous” and extend jurisdiction
- Does not apply to those with solely DD/ID

HB 2420 (2015)

- Took effect January 1, 2016
- Community mental health program director or director's designee ***shall*** consult with criminal defendant found unfit to proceed, prior to decision on commitment, to determine availability of treatment in community

Statutory Doorways into OSH

- ***Different services, different lengths of stay***
- Forensic Competency Evaluations
  - ORS 161.365* and 161.370
- Aid and Assist Restoration
  - ORS 161.370
- Guilty Except for Insanity (GEI)
  - ORS 161.295 and 161.327
- Civil Commitment
  - ORS 426.005 and 426.701
- Voluntary Civil Admissions

Different types of commitment =

- Different programs and services
- Different lengths of stay
- Different commitment purpose and treatment goals
- Different privileges/freedoms
- Different burden to overcome to medicate
- Different discharge planning

Oregon State Hospital

Patient Type	Median days at OSH
Guilty except for insanity (includes juvenile PSRB)	870
Aid and assist (ORS 161.370)	71
Civil (civil commitment, voluntary, voluntary by guardian)	189
Neuropsychiatric/Geriatric	190
Other (corrections, hospital hold, other)	94

The Oregon State Hospital: Salem

The Oregon State Hospital: Junction City

The New State Hospital

- There is a maximum census – every bed counts
- Designed to treat civil commitments who need a hospital level of care
- Not a “good” substitute to jail if the inmate is stable
- Not a “good” substitute for community mental health treatment – particularly low level offenders who really need housing and outpatient services

Hospitals are very different from jails

- Licensing and confidentiality laws
- Cannot lock people up or restrain them except for immediate emergency
- Overseen by CMS, Joint Commission, USDOJ, Disability Rights Oregon

Malingering

- Intentional production of false or grossly exaggerated symptoms motivated by external incentives
- 10-30% of people in legal system malinger
  - these are the low estimates
  - higher stakes = higher % of people malinger
- Some criminal defendants malinger so they can go to the state hospital rather than jail or prison

Hospitalization: Not Always Better

- Someone with mental illness at OSH who could be better served in the community can lose:
  - Housing
  - Support (family, friends, pets)
  - Benefits
  - School enrollment
  - Employment
  - Mental health care and other therapeutic support

GOING TO OSH OFTEN HELPS A PATIENT IN THE SHORT TERM

BUT HURTS THEM IN THE LONG TERM

ONE STEP FORWARD

BUT SEVERAL STEPS BACK

OSH Cost of Care

OSH	Fiscal Year	2005-06	2006-07	2007-08	2008-09	2009-10	2010-11	2012
Medical/Neuropsychiatric Services	Daily	404.82	431.22	427.25	640.26	640.26	640.26	713.53
	Monthly	12,347	13,116	13,031	19,475	19,475	19,475	**21,703**
Adult Treatment Services	Daily	458.56	558.16	649.01	456.12	456.12	456.12	945.00
	Monthly	13,986	16,977	19,795	13,874	13,874	13,874	**28,744**
Forensic Psychiatric Services	Daily	363.49	354.69	401.11	508.62	580.62	580.62	678.44
	Monthly	11,086	10,788	12,234	17,661	17,661	17,661	**20,636**
Overall Average Rates	Daily	388.97	405.30	451.83	568.19	568.19	568.19	719.19
	Monthly	11,864	12,328	13,781	17,282	17,282	17,282	**21,875**

OSH Census on January 7, 2016

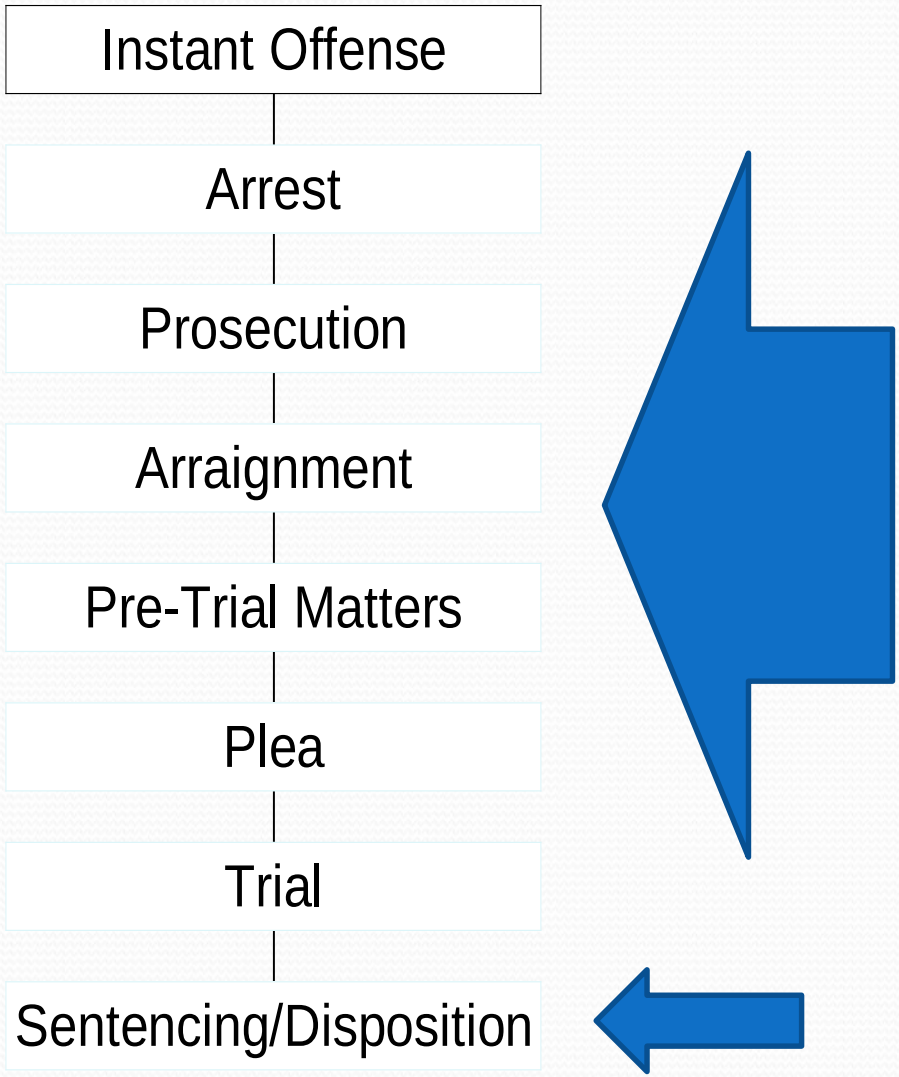
OSH Census By Commitment Type		
Forensic - Aid and Assist	**206**	**33.3%**
Court Order (161.370)	206	33.3%
Forensic - Guilty Except for Insanity	**223**	**36.0%**
GEI - Tier 1 (161.327)	96	15.5%
GEI - Tier 2 (161.327)	49	7.9%
GEI - Misdemeanor (161.328)	4	0.6%
Juvenile PSRB (419C.530)	1	0.2%
Revocation of Conditional Release - Tier 1	48	7.8%
Revocation of Conditional Release - Tier 2	25	4.0%
Civil	**189**	**30.5%**
Civil Commitment (426.130)	147	23.7%
Voluntary by Guardian (426.220)	42	6.8%
Other	**1**	**0.2%**
Civil Commitment PSRB (CCP) (426.701)	1	0.2%
Total	**619**	**100.0%**

The Geriatric units include patients with a variety of commitment codes. These units housed 57 patients on 01/08/2016.

Percent change,1/1/10 to 1/1/16

- Aid & Assist (ORS 161.370) **+142.9%**
  - *From January 2012 through December 2015, 40.8% of all new Aid & Assist admissions were patients charged with only misdemeanors*
- Guilty Except for Insanity **-37.0%**

Pathway Into Criminal Commitment



Difficulty in jail →Judge declares incompetent to proceed w/case → Usually sent to hospital→ Back to jail → Finish case

Guilty Except for Insanity

The Forensic Evaluation Service (FES) at the Oregon State Hospital

What FES Does

- Almost all of the court-ordered
  - Fitness to proceed (ORS 161.365 and 161.370)
  - Guilty except for insanity (ORS 161.295)
  - “Diminished capacity” (ORS 161.300)
- Court order is required
- Evaluation released to defense, prosecution and court

Fitness To Proceed Statutes (*current* mental state)

- ORS 161.360
  - Defines fitness to proceed, applies to all criminal fitness evaluations, including non-FES/community evaluations
- ORS 161.365
  - Defines process for initial court-ordered evaluations by FES
- ORS 161.370
  - Defines process for subsequent court-ordered evaluations and how defendants are restored

GEI and "Diminished Capacity" (mental state *when crime occurred*)

- ORS 161.295
  - Defines guilty except for insanity
- ORS 161.300
  - "Evidence that the actor suffered from a mental disease or defect is admissible whenever it is relevant to the issue of whether the actor did or did not have the intent which is an element of the crime." RARELY USED?
- ORS 161.315
  - Defines the process by which court-ordered GEI evaluations occur

When Is Someone Unfit to Proceed?

- ORS 161.360 defines incompetency
- ORS 161.360: A defendant may be found incapacitated if, as a result of mental disease or defect, the defendant is unable to:
  - understand the nature of the proceedings
  - assist and cooperate with their counsel
  - participate in the defense of the defendant

Incompetency is not….

- Dangerousness is not a reason for incompetence even if dangerousness is due to a mental disease or defect
- Severe symptoms do not automatically render a person incompetent to proceed
- Lack of factual knowledge does not mean incompetence
- Hospitalization for incompetency: not the same as Guilty Except for Insanity commitment

What Is Excluded?

- Incompetency must be a result of a "mental disease or defect"

- Generally taken to exclude:
  - antisocial conduct
  - personality disorders
  - substance-induced disorders
  - disorders of sexual behavior

Goals of Competency Treatment

- Treatment only until competency restored
- Can only keep in hospital for:
  - Reasonable period of time necessary to determine whether there is a substantial probability that defendant/client will gain/regain the capacity in foreseeable future
  - Must discharge as soon as fit or as soon as it is determined that there is not a substantial probability that defendant/client will become fit
- **There is no placement to a step-down environment**

How Long Can We Restore?

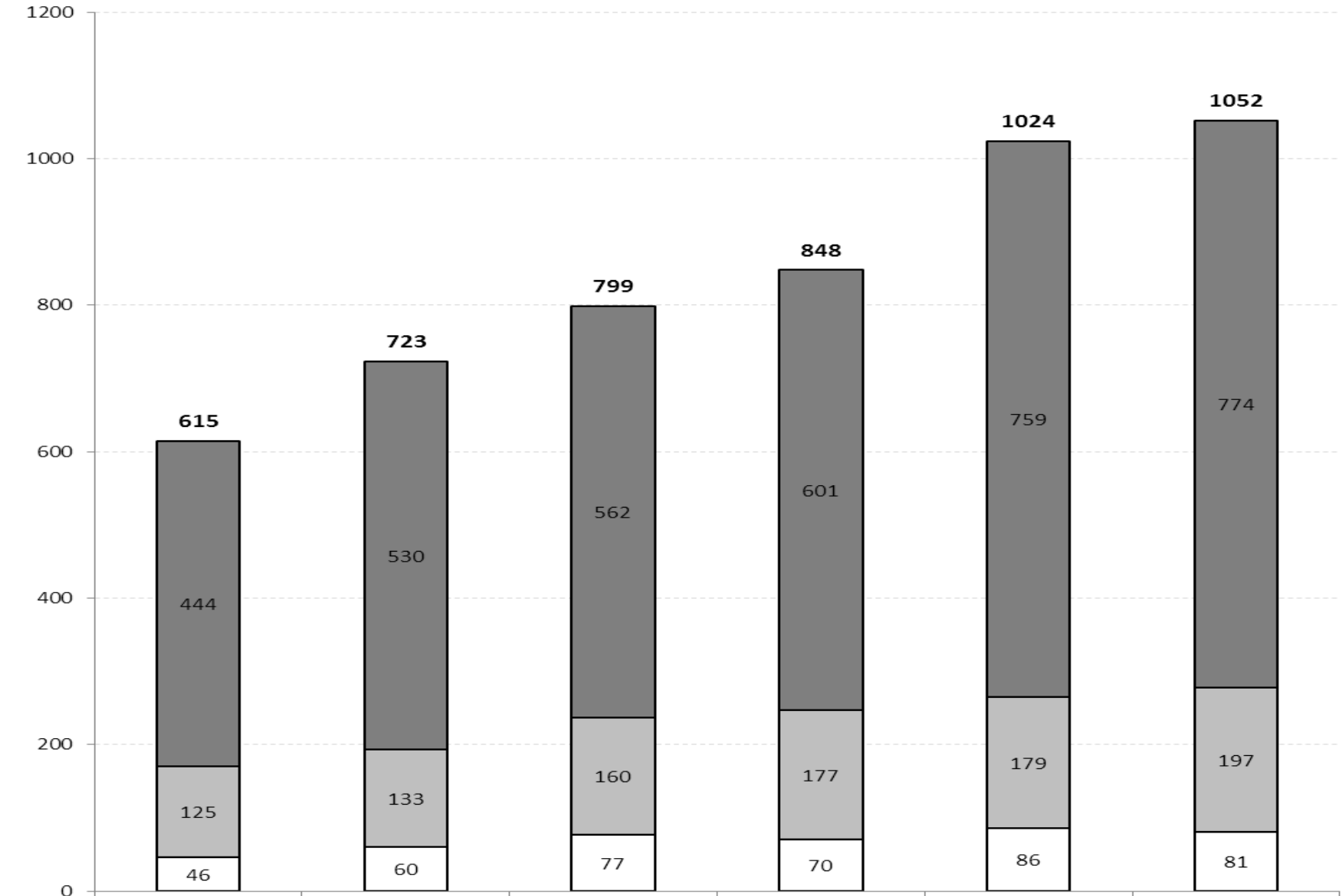
- Regardless of the number of charges with which the defendant is accused, "in no event shall the defendant be committed for longer than whichever of the following is shorter:
  - Three years; or
  - A period of time equal to the maximum sentence the court could have imposed if the defendant had been convicted."
- ORS 161.370

A Word About “Timing Out”

- We cannot keep an individual beyond the time equivalent to the maximum sentence for the charges (or three years if the sentence would be more than three years) and therefore we may have to discharge shortly after admission with little or no opportunity for treatment and restoration

- Rapid discharge usually leads to rapid release from the jail, often with little or no mental health services

FES Evaluations by Type since 2010



	2010	2011	2012	2013	2014	2015
370	444	530	562	601	759	774
365	125	133	160	177	179	197
315	46	60	77	70	86	81
Total	615	723	799	848	1024	1052

Getting a Court-ordered Evaluation

- FES administrative assistant is Kelly Kahn-Bass
  - (503) 945-9276
  - OSHForensic.EvaluationService@dhsoha.state.or.us
- These points of contact are monitored by other admin assistants when she is not available
- Email orders to her
- She can answer many of your questions

Common Concerns

- Should I get a state evaluation? What are the state minimum quality standards for a report? How does this all work?
  - You can call or email the FES Director
    - 541-680-4810
    - stephanie.lopez@state.or.us
- What is happening with the scheduling? When is the report coming? How does this all work?
  - Dr. Mandy Davies, the Associate Director
  - (503) 947-1063

Getting the Best Report Possible in a Timely Manner– the Order

- Use the order template whenever possible
- When there is a deviation from standard order, call us to discuss so as to avoid need for further amended orders
- Ensure that the order gets sent to us quickly

Restorative services (RS) in community?

- Essential for attorneys and judges to communicate with community mental health to find out whether a particular client can be restored in the community (HB 2420) (2015)
- If the community can support a particular client, jail time would likely be reduced
- Sometimes we cannot medicate unfit defendants

List of Certified Evaluators & Forensic Evaluation Checklist

- http://www.oregon.gov/oha/amh/forensic-eval/Pages/index.aspx
- http://www.oregon.gov/oha/amh/forensic-eval/Pages/Tools%20and%20Training.aspx
- Or just Google “Oregon Forensic Certification”

More Help

- OSH Forensic and Legal services website: http://www.oregon.gov/oha/amh/osh/fls/Pages/index.aspx
- Sample order templates
- Important Oregon court decisions in fitness to proceed and GEI issues

Questions?

Thank You

39